

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORETHA V. NUNN and U.S. POSTAL SERVICE,
POST OFFICE, Houston, Tex.

*Docket No. 96-1271; Submitted on the Record;
Issued July 29, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for continuation of pay for the period May 19, 1995 and beyond due to her May 16, 1995 accepted employment-related condition, heat exhaustion, and (2) whether the Office by its December 18, 1995 decision, abused its discretion by refusing to reopen appellant's case for further review on the issue of entitlement to continuation of pay pursuant to 5 U.S.C. § 8128(a).

On May 17, 1995 appellant, then a 56-year-old custodian, filed a traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on May 16, 1995 while performing her duties, "I was working in the basement stairwell, when I suddenly began to feel weak and started sweating p[ro]fusely." She went on to say, "I suddenly felt weak, dizzy, my head began to hurt and my arm felt numb. I experienced a tingling sensation in both arms. As my headache increased I felt light headed." On the reverse side of the form, appellant's supervisor stated that her knowledge of the facts about this injury did not agree with statements of the employee. The supervisor further stated, "Per witness statement, the claimant showed signs of illness prior to reporting to work. Controversion statement forthcoming."

Accompanying appellant's claim were, a May 16, 1995 medical certificate by Dr. D. Hall, a Board-certified family practitioner who treated appellant on the day of her injury and recommended two days bedrest; a May 19, 1995 certificate to return to work by Dr. Donald R. Nino, a Board-certified family practitioner, on which he indicated that appellant "seen in ER May 16, 1995", was under his care since May 19, 1995 and that she was unable to perform her regular duties or return to work at that time; a May 23, 1995 medical treatment report by Dr. Donald R. Hearn, a Board-certified family practitioner, who gave a history of injury; a May 23, 1995 electrocardiogram (EKG) taken for Dr. Hearn; a June 7, 1995 return to work certificate by Dr. Hearn, on which he indicated that appellant has been under his care from May 23, 1995 to present, that she was referred to a specialist and indicating "non-applicable" regarding appellant returning to work; and a June 7, 1995 medical treatment report by Dr. Hearn,

on which he diagnosed syncope with weakness, indicated that appellant was unable to return to work until further notice, and referred appellant to Dr. Schulman.

On July 19, 1995 the record was updated to include a July 7, 1995 report, by Dr. Brian J. Schulman, a Board-certified neurologist. Dr. Schulman stated that he saw appellant on that day for complaints of weakness, dizziness, generally tired and having difficulty functioning. The doctor related the May 16, 1995 incident as given by appellant. Dr. Schulman reported his findings on examination and stated that "I cannot account for the patients soft neurological findings. She has had a CT [computer tomography] scan, we believe. I will obtain copies of that. I have also ordered an [electroencephalogram] EEG, and I think she should be followed-up."

On August 1, 1995 the record was updated to include appellant's July 4, 1995 election to enter into a leave without pay status; another copy of Dr. Hearn's May 23, 1995 medical treatment report, which included additional information, a diagnosis of probable left CVD with right side weakness; and an attending physician's report (Form CA-20) dated July 20, 1995, completed by Dr. Hearn, on which he gave a history of injury, a diagnosis of vertigo, dizziness, a referral to Dr. Schulman and period of total disability from May 23, 1995 to present and indicated "unknown when can resume regular work."

On August 10, 1995 the report was updated to include an August 8, 1995 letter, from the employing establishment to Dr. Schulman requesting that he provide his opinion on when appellant could return to work either on light or regular duty.

By letter decision dated August 23, 1995, the Office accepted appellant's claim for heat exhaustion. By another letter decision, also dated August 23, 1995, the Office denied appellant's request for continuation of pay for May 19, 1995 and beyond, on the grounds that no medical rationale was provided as to why she could not return to work after the 48 hours of bedrest prescribed by Dr. Hall.

By letter also dated August 23, 1995, the Office contacted Dr. Schulman requesting that he provide a narrative report describing the basis for appellant's continuing disability due to her accepted employment-related condition, heat exhaustion, including his medical reasons and objective findings to support additional disability.

On August 25, 1995 the record was updated to include a copy of Dr. Schulman's July 7, 1995 report, which had previously been submitted.

By letter dated September 12, 1995, appellant requested reconsideration of the August 23, 1995 decision, denying continuation of pay. In support of the request appellant submitted eight medical documents.

By decision dated December 18, 1995, the Office denied appellant's September 12, 1995 request, for reconsideration finding that the evidence submitted in support was repetitious in nature and insufficient to warrant review of the prior decision.

The Board finds that this case is not in posture for decision.

Section 8118 of the Federal Employees' Compensation Act authorizes the continuation of pay for a period of wage loss, not exceeding 45 days, "due to traumatic injury." Under regulations of the Secretary of Labor, "traumatic injury" is defined as one "caused by a specific event or incident or series of events or incidents within a single day or work shift."

In the instant case, appellant was seen in an emergency room on May 16, 1995, the same day as her injury, by Dr. Hall, who recommended two days bedrest and drink lots of fluids. The Office accepted that appellant suffered an employment-related injury, heat exhaustion, on May 16, 1995 and awarded appellant 16 hours of continuation of pay for May 17 and 18, 1995; but denied continuation of pay for May 19, 1995 and beyond due to a lack of medical evidence supporting a continuing disability. The Office requested that appellant submit a narrative medical report from her attending physician, which included among other things, an opinion on the relationship of any continuing disability to the accepted injury. Subsequently, the Office contacted Dr. Schulman, directly, and requested that he provide a narrative report describing the basis for appellant's continuing disability due to her accepted condition, heat exhaustion, including the doctor's medical reasons and objective findings in support of additional disability.

The Board finds that the Office attempted to further develop the evidence concerning any continuing disability related to appellant's May 16, 1995 accepted employment-related injury by contacting Dr. Schulman; however, Dr. Schulman only saw appellant on one occasion and that was nearly two months after the employment-related incident. Dr. Schulman, in his July 7, 1995 report, to Dr. Hearn, did not provide a diagnosis, stated that he could not explain appellant's soft neurological findings and recommended further testing. Dr. Hearn, on the other hand, was appellant's treating physician, since May 23, 1995, only a few days after the incident and continuing and was in a better position to give an opinion on any continuing disability during appellant's absence from work. The Board notes that in appellant's September 12, 1995 request for reconsideration, she stated that Dr. Hearn's office advised her that a narrative statement would be submitted upon request from the Office.

On remand, the Office should request Dr. Hearn provide a rationalized medical opinion addressing a causal relationship between appellant's May 16, 1995 accepted heat exhaustion, to any continuing disability for the period May 19, 1995 to January 9, 1996 when she returned to light duty and to February 5, 1996 when she returned to full duty.¹ After such further development as necessary, the Office shall issue an appropriate decision.

¹ If the Office determines that appellant is entitled to additional continuation of pay, it should also determine if she is entitled to any further compensation. The Board notes that appellant submitted Forms CA-7 which were received by the Office on August 1 and September 12, 1995.

In light of the above, the Office of Workers' Compensation Programs' decisions dated December 18 and August 23, 1995, denying continuation of pay are set aside and the case is remanded for further development of the evidence consistent with this decision.²

Dated, Washington, D.C.
July 29, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² In view of the Board's decision on the first issue, it is unnecessary for the Board to address the second issue in this case. The Board notes that following the Office's December 18, 1995 decision, appellant submitted additional evidence as well as on appeal to the Board.